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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/514,243	02/28/2000	Olga Boric-Lubecke	2925-359P	9483

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HARNESSE, DICKEY & PIERCE, P.L.C.  
P.O. BOX 8910  
RESTON, VA 20195

EXAMINER

ASTORINO, MICHAEL C

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 05/28/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/514,243

Applicant(s)

BORIC-LUBECKE ET AL.

Examiner

Michael Astorino

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 22-28 is/are allowed.
- 6) ☒ Claim(s) 1-4, 17, 18, 20, 21 and 29 is/are rejected.
- 7) ☒ Claim(s) 5-16, and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 11 February 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The corrected or substitute drawings were received on 2/11/2003. The informal drawing change of figure 5 is accepted by the examiner. In addition, as stated in the Drawing Correction Approval Request the informal correction in red ink should be prepared formally subsequent to allowance.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 and 17-18, 20-21 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Heinonen et al. US Patent Number 6,295,506 B1.

4. In regards to claim 1, limitations of claim 18 and 20, and 29 Heinonen et al disclose a measurement apparatus comprising a wireless device (1) having circuitry for performing a wireless function independent from sensing at least one prescribed characteristic of a subject. Heinonen et al. describes a conventional mobile phone (1) for use with a physiological medical measuring system (column 2, lines 1-4). It is inherent that a conventional mobile telephone would be able to performing a wireless telephone call as the wireless function independent from sensing at least one prescribed characteristic of a subject.

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Heinonen et al discloses using at least a portion of said circuitry for performing said independent wireless function to also sense at least one prescribed characteristic of a subject in two ways. First, the at least a portion of said circuitry for performing said independent wireless function includes a reduced sized battery unit for powering the measurement unit and the phone (column 4, lines 1-9). In this case, the battery is part of the circuitry to perform a wireless phone call and independent from performing a phone call, the battery also is need to power the measurement unit. Secondly, the antenna is used for “sensing” a predescribed characteristic of a user because a calibration factor for the identification code of the test strip needs to be obtained by a central database (column 4, lines 30-68 and column 5, lines 1-9) via a telephone call so that a blood glucose level can be “sensed”. The antenna completes the sensing when a test result is received from the database via a cellular telephone network (12).

Lastly, the predescribed characteristic of the subject that is being sensed is blood glucose measurement. Heinonen et al disclose the use of sensing a blood glucose level (column 4, lines 49-57) of a user by use of a module (2) that accepts a test strip (5) with a reagent (4).

5. In regards to claim 2, Heinonen et al discloses the wireless device being a mobile phone (1).

6. In regards to claim 3, Heinonen et al discloses said portion of said circuitry for performing said independent wireless function used to sense said prescribed characteristics includes an antenna of said wireless device (column 4, lines 30-68 and column 5, lines 1-9). As stated above, in a first mode the antenna of the phone is used for making a phone call. In addition, a second mode the antenna is used for “sensing” a predescribed characteristic of a user because a calibration factor for the identification code of the test strip needs to be obtained by a

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central database (column 4, lines 30-68 and column 5, lines 1-9) via a telephone call so that a blood glucose level can be “sensed”.

7. In regards to claim 4, Heinonen et al discloses wherein said portion of said circuitry for performing said independent wireless function used to sense said prescribed characteristics includes at least one of transmission and reception circuitry of said wireless communication device (column 4, lines 30-68 and column 5, lines 1-9). In the case of the antenna, being shared the circuitry in two modes a phone call made to transmit the identification code of the test strip and calibration data is received via the antenna of the mobile phone.

8. In regards to claim 17, wherein said wireless device (1) includes a module (2) attached thereto (1) and housing a portion of circuitry (antenna Heinonen et al.) for sensing said prescribed characteristics of said subject (column 4, lines 30-68 and column 5, lines 1-9).

9. In regards to further limitations of claim 18 and 21, Heinonen et al disclose a presentation device receiving said sensed prescribed characteristic data from said wireless device and displaying said sensed prescribed characteristic data (display on the mobile phone; column 5, lines 22-23).

### ***Response to Arguments***

10. Applicant's arguments filed 2/11/2003 have been fully considered but they are not persuasive. The applicant argues that Heinonen et al. does not include “circuitry for performing said independent wireless function to also sense at least one prescribed characteristic of a subject”. However as described in paragraph 6, the “circuitry for performing said independent wireless function to also sense at least one prescribed characteristic of a subject” could be either

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the battery or the antenna of Heinonen et al. Furthermore, in regards to the applicant's statement that because Heinonen et al. states "comprises modified software but is otherwise conventional" it is impossible that Heinonen et al. is capable of achieving the functionality of "circuitry for performing said independent wireless function to also sense at least one prescribed characteristic of a subject" is irrelevant. It is irrelevant because the applicant never has stated a restriction of the term "sense" as only the circuitry that receives the reflected signal or in any other that would prevent the use of Heinonen et al. as being an example of the broadest reasonable interpretation of the claims.

*Allowable Subject Matter*

11. Claims 5-16 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. For clarification purposes, Corn discloses a wireless function independent from sensing being an alarm system however the alarm system is dependent on the measurements taken from the transmission and reception circuitry being the laser Doppler breathing sensing system, therefore Corn cannot be used in a prior art rejection for independent claim 1 and subsequently dependent claim 5. Hence, claims 5-15 are allowable over the prior art for claiming a wireless device having circuitry for performing a wireless function independent from sensing a pre-described characteristic of a subject. Claim 16 is allowable for the signal being one of breathing activity, heart activity, and temperature. Claim 19, for having a presentation device that filters said sensed prescribed characteristic data.

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12. Claims 22-26 are allowed. No prior art has disclosed a transmitter and receiver that receives sensed data and has two modes. Although some art discloses two separate transmitters to perform two separate functions. *Corn* discloses two transmitters wherein transmission of an alarm signal is dependent on a reception of a transmitted signal. In addition, *Dempsey et al.* discloses a device that receives a re-radiated transmitted signal however and may perform a second function of an alarm. However, the second function of an alarm is not a wireless function that uses a portion of said circuitry for performing said wireless function. Nor does *Nowogrodzki* disclose two wireless modes that use a single transmitter and receiver.

### *Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. *Corn* US Patent Number 6,062,216 A as a sleep apnea detector using laser Doppler techniques having a transmitter and receiver. *Nowogrodzki* US Patent Number 4,138,998 A as a microwave signal reflector implanted in a human capable of sensing temperature. *Balkin et al.* US Patent Number 6,419,629 B1 as sleep history device that is connected to a network. Lastly, *Dempsey et al.* 6,132,371 A as a device that uses a leadless monitoring device to re-radiate a signal when demodulated can display ECG data.

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Astorino whose telephone number is 703-306-9067. The examiner can normally be reached on Monday-Thursday, 10:00AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0758 for regular communications and 703-308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

MA  
May 22, 2003

  
**MAX F. HINDENBURG**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**